

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 98-797

May 7, 1999

RCN TELECOM SERVICES OF MAINE INC.  
Petition for Finding of Public  
Convenience and Necessity to  
Provide Service as a Local  
Exchange Carrier as a Reseller  
and as a Reseller Interexchange  
Telephone Utility

ORDER GRANTING AUTHORITY  
TO PROVIDE LOCAL EXCHANGE  
SERVICE AS A RESELLER AND  
INTEREXCHANGE SERVICE AS A  
RESELLER AND APPROVING  
SCHEDULE OF RATES AND TERMS  
AND CONDITIONS

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, the Commission grants RCN Telecom Services of Maine (RCN or Company) the authority to provide competitive local exchange service as a reseller and intrastate interexchange service as a reseller in the State of Maine, and approves the Company's Terms and Conditions and Rate Schedules. We also exempt RCN from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

**I. APPROVAL OF APPLICATION TO SERVE**

On October 13, 1998, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, RCN filed a petition with the Commission requesting authority to provide local exchange telephone service and interexchange service as a reseller in Maine. 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to serve where another utility is already authorized or is providing the same or similar service, before we grant approval under section 2102 for an additional public utility to provide service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting RCN the authority to provide local exchange and interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

RCN's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and facilities-based interexchange services in Maine.

## **II. SERVICE TERRITORY**

### **A. Interexchange Service Authority**

RCN has requested authority to provide interexchange service as a reseller throughout the state. We grant that authority.

### **B. Local Service Authority**

RCN has requested authority to provide local exchange service throughout the state. It states that it will offer service only as a reseller of local exchange service provided by other Local Exchange Carriers (LECs) in that area. We define local resale as the offering of local exchange service purchased from another Competitive Local Exchange Carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an Incumbent Local Exchange Carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale.

RCN's authority to provide local exchange service is limited to resale unless it obtains further authorization from the Commission. As discussed in Part IV below, as a practical matter, RCN will need an interconnection agreement or resale agreement with rural ILECs in order to provide local exchange service in the areas served by those companies.

RCN's proposed Rates, Terms and Conditions, which we approve today, also limit its local exchange service offerings to resold services. If RCN wishes to

expand the scope of its authority in the future to provide facilities-based switched local exchange services, it shall seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. RCN shall simultaneously file amended Rates, Terms and Conditions pursuant to 35-A M.R.S.A. § 307 that state its proposed revised service territory, which shall be limited to those areas in which it will be ready to provide facilities-based switched local exchange service within a reasonable period of time. The application shall include information establishing readiness. It is not necessary for a CLEC with existing authority to present a full application in order to request additional service territory authority. The Commission will act expeditiously on any such application and revisions of Terms and Conditions.

### **III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES**

We allow the terms and conditions proposed by RCN to go into effect. RCN has used the Commission's expedited process. That process includes standard terms and conditions that comply with Maine law and the Commission's Rules. We have not reviewed the Company's Terms and Conditions and Rate Schedules. If there is any conflict between a provision in RCN's terms and conditions and the Commission's Rules or a statute, the rule or statute will control. Included in the Terms and Conditions are pages stating that in the event of such a conflict, the statute or the Commission's Rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of RCN's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by RCN to go into effect.

### **IV. INTERCONNECTION AGREEMENT(S)**

In order to provide local exchange service, a CLEC must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for RCN's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), the "rural exemption" of 47 U.S.C. § 251(f) will apply. All of Maine's independent telephone companies are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the

universal service provisions of] section 254 . . . .” Although the service territory we grant today is statewide and RCN's terms and conditions do not limit its service territory, as a practical matter it cannot offer local exchange service in the service territory of a rural ILEC until such time as that ILEC's rural exemption is terminated.

On May 28, 1997, in Docket No. 97-115, the Commission approved an agreement between C-TEC and New England Telephone and Telegraph Company d/b/a Bell Atlantic - Maine pursuant to 47 U.S.C. § 252. That agreement permits affiliated interests of C-TEC, including RCN, to obtain interconnection, UNEs and services from Bell Atlantic - Maine. As a condition of providing local exchange service, RCN must comply with the terms of any interconnection agreements that it has reached with any ILECs and that have been approved by the Commission.

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## **V. WAIVER OF PAYMENT OF ACCESS CHARGES**

Our approval of RCN's application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers who have on file with the Commission approved access charge rate schedules. Because the Commission's Chapter 280 requires *each* interexchange carrier to pay applicable access charges, the chapter ordinarily requires both an underlying carrier and a switchless reseller<sup>1</sup> to pay access charges for the same call. Switchless resellers may avoid double payment of access by asking the Commission to waive certain sections of Chapter 280.

The Commission has determined that RCN is a switchless reseller. Using the Commission's standard Waiver Request Form (attached to this Order), the Company has asked the Commission to waive the requirement of Chapter 280 that requires it to pay access charges, subject to the conditions and requirements described on the Waiver Request Form. We find that the granting of the waiver upon those conditions is reasonable and grant the waiver subject to the stated conditions. RCN has stated that RCN Long Distance Company will be its underlying carrier from which it purchases services that it resells. RCN Long Distance Company was authorized by the

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<sup>1</sup>For purposes of applying the access charge waiver, we define switchless resellers as entities which do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

Commission in Docket No. 96-303 to provide facilities-based intrastate interexchange service.

## **VI. WAIVERS; REPORTING REQUIREMENTS**

As a condition of providing local exchange service, RCN must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. RCN shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Pursuant to sections 11(A) and 12(A) of Chapter 280, RCN is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests, related to RCN's interexchange carrier activities. Although RCN has not requested a waiver from the requirements of Chapter 210, or from 35-A M.R.S.A. §§ 707 and 708, the Commission has the authority to grant such waivers on its own motion. Because RCN's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, the Company must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, and its annual intrastate minutes for use for the purpose of determining its regulatory assessment.<sup>2</sup> If RCN resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales. Pursuant to Chapter 280, § 11(B), RCN

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, §§ 12(B) and (C) and in the ordering paragraphs below.

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<sup>2</sup>The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

In addition, RCN shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

## **VII. OTHER REQUIREMENTS**

RCN shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in the ordering paragraphs below.

## **VIII. ORDERING PARAGRAPHS**

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of RCN Telecom Services of Maine to provide competitive local exchange telephone service as a reseller and interexchange service as a reseller in the State of Maine;

2. Exempt RCN Telecom Services of Maine from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year;

3. Exempt RCN Telecom Services of Maine from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that RCN Telecom Services of Maine shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of RCN Telecom Services of Maine or of any entity that owns more than 50% of RCN Telecom Services of Maine. RCN Telecom Services of Maine shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. RCN Telecom Services of Maine shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, RCN Telecom Services of Maine shall amend its rate schedules and terms and conditions to reflect any change in identity;

4. Order that RCN Telecom Services of Maine's proposed terms and conditions and rate schedules (Original pages 1-58) attached to this Order, shall be effective on the date of this Order;

5. Exempt RCN Telecom Services of Maine from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but RCN shall provide notice to the Commission of any

reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of RCN or of any entity that owns more than 50% of RCN. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), RCN Telecom Services of Maine shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. RCN Telecom Services of Maine shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, RCN shall amend its rate schedules and terms and conditions to reflect any change in identity; and

6. Order that RCN Telecom Services of Maine shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20% to all affected customers.

Dated at Augusta, Maine, this 7th day of May, 1999.

BY ORDER OF THE COMMISSION

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Dennis Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Nugent  
Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.